Supreme Court, U.S.
FILED
06-665 NOV 10 2006
OFFICE OF THE CLERK

No. 06-

IN THE

Supreme Court of the United States

CHANDER KANT; ASHIMA K. KANT,

Petitioners,

v.

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC;
DANIEL RIGTERINK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

SAMUEL J. HALPERN
443 Northfield Avenue
West Orange, NJ 07052
(973) 669-9660

Attorney for Petitioners

204443

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED FOR REVIEW

Does the Fourth Circuit decision that Petitioners' state law legal malpractice case was claim-precluded by the dismissal for failure to state a claim of their federal civil rights case conflict with the Supreme Court's decision in *Semtek International, Inc. v. Lockheed Martin Corporation*?

PARTIES TO THE PROCEEDING

Chander Kant and Ashima K. Kant, Short Hills, New Jersey, Petitioners.

Bregman, Berbert, Schwartz & Gilday, LLC and Daniel Rigterink, Bethesda, Maryland, Respondents.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF CITED AUTHORITIES	v
TABLE OF APPENDICES	viii
CITATION OF OPINIONS OF LOWER COURT ...	1
BASIS FOR SUPREME COURT JURISDICTION	1
STATUTES INVOLVED IN THE CASE	1
STATEMENT OF THE CASE AND BASIS FOR FEDERAL JURISDICTION IN COURT OF FIRST INSTANCE	1
REASONS FOR GRANTING PETITION	4

1. THE DECISION OF THE FOURTH CIRCUIT WHICH HELD THAT PETITIONERS' STATE LAW LEGAL MALPRACTICE CLAIM WAS CLAIM-PRECLUDED BY THE DISMISSAL FOR FAILURE TO STATE A CLAIM OF THEIR FEDERAL CIVIL RIGHTS CASE CONFLICTS WITH THE SUPREME

Contents

		Page
	COURT'S DECISION IN *SEMTEK INTERNATIONAL, INC. v. LOCKHEED MARTIN CORPORATION.*	4
2.	THE ISSUE PRESENTED IS OF GREAT PRACTICAL IMPORTANCE AND IS RECURRING.	7
3.	THE DECISIONS BELOW REFLECT WIDESPREAD UNCERTAINTY OVER THE MEANING OF *SEMTEK* WHICH THIS COURT ALONE CAN DISPEL.	8
CONCLUSION		9

TABLE OF CITED AUTHORITIES

Cases Cited: *Page*

Allen v. McCurry,
449 U.S. 90; 101 S. Ct. 411;
66 L. Ed. 2d 308 (1980) 9

Arizona v. California,
530 U.S. 392; 120 S. Ct. 2304;
147 L. Ed. 2d 374 (2000) 8

Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation,
402 U.S. 313; 91 S. Ct. 1434;
28 L. Ed. 2d 788 (1971) 6, 7, 9

Gibson v. Berryhill,
411 U.S. 564; 93 S. Ct. 1689;
36 L. Ed. 2d 488 (1973) 9

In re Universal Serv. Fund Tel. Billing Practices Litig.,
300 F. Supp. 2d 1107 (D. Kan. 2003) 8

In re Varat Enterprises, Inc.,
81 F.3d 1310 (4th Cir. 1996) 3

Kremer v. Chem. Constr. Corp.,
456 U.S. 461; 102 S. Ct. 1883;
72 L. Ed. 2d 262 (1982) 8

Cited Authorities

	Page
Matosantos Commer. Corp. v. Applebee's Int'l, Inc., 245 F.3d 1203 (10th Cir. 2001)	8
Montana v. United States, 440 U.S. 147; 99 S. Ct. 970; 59 L. Ed. 2d 210 (1979)	9
Selkridge v. United of Omaha Life Ins. Co., 237 F. Supp. 2d 600 (D.V.I. 2002)	8
Sellan v. Kuhlman, 261 F.3d 303 (2d Cir. 2001)	8
Semtek International, Inc. v. Lockheed Martin Corporation, 531 U.S. 497, 121 S. Ct. 1021, 149 L. Ed. 2d 32 (2001)	*passim*
Statutory Provisions Cited:	
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1332(a)(1)	3
28 U.S.C. § 2072(b)	1, 7
42 U.S.C. § 1981	2
42 U.S.C. § 1982	2

Cited Authorities

	Page
42 U.S.C. § 1983	2
42 U.S.C. § 1985(3)	2
42 U.S.C. § 1986	2
Federal Rules Cited:	
Fed. R. Civ. P. 12(b)(6)	3
Fed. R. Civ. P. 41(a)	6
Fed. R. Civ. P. 41(b)	2, 4, 5, 6, 7, 8
Fed. R. Civ. P. 60(b)	3

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Fourth Circuit Decided June 13, 2006 ..... 1a

Appendix B — Memorandum And Order Of The United States District Court For The District Of Maryland Filed November 16, 2005 ..... 2a

Appendix C — Memorandum Of The United States District Court For The District Of Maryland Dated And Filed July 5, 2005 ..... 5a

Appendix D — Order Of The United States District Court For The District Of Maryland Dated And Filed July 5, 2005 ..... 11a

CITATION OF OPINIONS OF LOWER COURT

The opinions of the Court of Appeals (App., 1a), of the District Court (App., 2a-4a) which was incorporated in the order denying petitioners' motion for reconsideration, and the original opinion and order of the District Court (App., 5a-12a) are unreported.

BASIS FOR SUPREME COURT JURISDICTION

The Court of Appeals for the Fourth Circuit entered its ruling on June 13, 2006. The Kants thereafter obtained an extension of time to file from Chief Justice John G. Roberts, Jr., to and including November 10, 2006. The Supreme Court is authorized to hear this matter pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

28 U.S.C. § 2072(b):

> (b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

STATEMENT OF THE CASE AND BASIS FOR FEDERAL JURISDICTION IN COURT OF FIRST INSTANCE

This case raises important, recurring questions relating to the preclusive effects of a dismissal for failure to state a claim, the meaning of this Court's unanimous decision in *Semtek International, Inc. v. Lockheed Martin Corporation,*

> adjudication upon the merits' in Rule 41(b) is to be found in Rule 41(a) which, in discussing the effect of voluntary dismissal by the plaintiff makes clear that an 'adjudication upon the merits' is the opposite of a 'dismissal without prejudice'.
>
> * * *
>
> We think, then, that the effect of the 'adjudication on the merits' default provision of Rule 41(b) – and, presumably, of the explicit order in the present case that used the language of that default provision – is simply that, unlike a dismissal 'without prejudice,' the dismissal in the present case barred refilling of the same claim in the United States District Court for the Central District of California. That is undoubtedly a necessary condition, but it is not a sufficient one, for claim-preclusive effect in other courts." *Id.* at 505-506.

Semtek therefore holds that 'adjudication on the merits' means that the same claim cannot be filed in the same court: it does not prohibit filing a different claim in the same court. In fact, in *Blonder-Tongue Lab., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 91 S. Ct. 1434, 28 L. Ed. 2d 788 (1971), the Supreme Court held:

> "The defense of claim preclusion has three elements: (1) an identity of claims in the suit in which a judgment was entered and the current

> litigation, (2) a final judgment on the merits in the previous litigation, and (3) identity or privity between parties in the two suits." *Id.* at 323-24.

BBSG I was a federal question case which applied federal common law in the determination of whether the Kants stated a claim for relief. BBSG II was a diversity case involving state law claims. Because BBSGI cannot be deemed as the identical claim, it should not have been accorded a claim preclusive effect in BBSG II.

2. THE ISSUE PRESENTED IS OF GREAT PRACTICAL IMPORTANCE AND IS RECURRING

The interpretation of what preclusive implications does an 'adjudication on the merits' for failure to state a claim has is particularly significant because of its far-reaching legal and practical effects on the public. Such preclusions are an important matter involving federal practice and procedure and construction of federal rules, and raise the issue of how federal dismissals without actually going into the merits of the underlying claim may abridge rights of U.S. citizens and entities. These could be either substantive or procedural due process including the right to have their "day in the court." Such preclusive interpretations of Fed. R. Civ. P. 41(b) may also violate the jurisdictional limitation of the Rules Enabling Act: that the Rules "shall not abridge, enlarge or modify any substantive rights" 28 U.S.C. § 2072(b).

This case shows a clear conflict with the Supreme Court authority. It is critical that the Supreme Court hear this case and address this clear and palpable conflict to ensure that the district courts and circuit courts throughout the nation understand and follow the preclusion law as developed in

Semtek. Litigants faced with Rule 41(b) dismissal applications based on claim-preclusion deserve nothing less. The problem is recurring as shown by lower courts' decisions in this case and other cases cited in the next section.

3. THE DECISIONS BELOW REFLECT WIDESPREAD UNCERTAINTY OVER THE MEANING OF *SEMTEK* WHICH THIS COURT ALONE CAN DISPEL.

Post-*Semtek* cases illustrate the confusion and uncertainty in the manner in which the *Semtek* mandate is applied. *See, e.g., Sellan v. Kuhlman*, 261 F.3d 303 (2d Cir. 2001); *Matosantos Commer. Corp. v. Applebee's Int'l, Inc.*, 245 F.3d 1203 (10th Cir. 2001); *Selkridge v. United of Omaha Life Ins. Co.*, 237 F. Supp. 2d 600 (D.V.I. 2002); and *In re Universal Serv. Fund Tel. Billing Practices Litig.*, 300 F. Supp. 2d 1107 (D. Kan. 2003).

Matosantos Commer. Corp. v. Applebee's Int'l, Inc. and *In re Universal Serv. Fund Tel. Billing Practices Litig.* distinguishing between claim-preclusion and issue-preclusion, state that *Semtek* does not definitely resolve what preclusion rule should be applied for issue preclusion. Supreme Court precedent on issue-preclusion provides some guidance on this issue. *Arizona v. California*, 530 U.S. 392; 120 S. Ct. 2304; 147 L. Ed. 2d 374 (2000); and *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461; 102 S. Ct. 1883; 72 L. Ed. 2d 262 (1982). For example, *Kremer v. Chem. Constr. Corp.* held:

> "We have previously recognized that the judicially created doctrine of collateral estoppel does not

apply when the party against whom the earlier decision is asserted did not have a 'full and fair opportunity' to litigate the claim or issue, *Allen v. McCurry*, 449 U.S., at 95; *Montana v. United States*, 440 U.S. 147, 153 (1979); *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328-329 (1971). (Note 22: While our previous expressions of the requirement of a full and fair opportunity to litigate have been in the context of collateral estoppel or issue preclusion, it is clear from what follows that invocation of res judicata or claim preclusion is subject to the same limitation). 'Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation.' *Montana v. United States, supra*, at 164, n. 11. Cf. *Gibson v. Berryhill*, 411 U.S. 564 (1973)." *Id.* at 480-481.

CONCLUSION

For the reasons hereinbefore expressed, Petitioners respectfully request that this Court grant this petition for certiorari.

Respectfully submitted,

SAMUEL J. HALPERN
443 Northfield Avenue
West Orange, NJ 07052
(973) 669-9660

Attorney for Petitioners

APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DECIDED JUNE 13, 2006

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 06-1017

CHANDER KANT; ASHIMA K. KANT,

Plaintiffs - Appellants,

versus

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC; DANIEL RIGTERINK,

Defendants - Appellees.

Submitted: May 26, 2006 Decided: June 13, 2006.

PER CURIAM:

Chander Kant and Ashima Kant appeal the district court's order denying relief on their civil action and denying their Fed.R.Civ.P. 60(b) motion for reconsideration. We have reviewed the record and find no reversible error. Accordingly, we affirm on the reasoning of the district court. *See Kant v. Bregman, Berbert, Schwartz & Gilday, LLC*, No. CA-04-3433-WMN (D. Md. July 5, 2005; Nov. 16, 2005). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED.

APPENDIX B — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND FILED NOVEMBER 16, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Civil Action No. WMN-04-3433

CHANDER KANT, *et al.*

v.

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC, *et al.*

Civil Action No. WMN-02-2371

CHANDER KANT, *et al.*

v.

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

MEMORANDUM AND ORDER

On July 5, 2005, this Court issued an order granting Defendants' motion to dismiss Civil Action No. WMN-04-3433 (BBSG II) and denying Plaintiffs' Motion For Relief Under Rule 60(b) in Civil Action No. WMN-02-2371 (BBSG I). Plaintiffs have filed a motion for reconsideration of that order, Paper Nos. 17 and 18 (BBSG II) and Paper Nos. 33 and 34 (BBSG I).

Appendix B

The Court dismissed BBSG II on the ground that it was barred under the doctrine of claim preclusion. In opposing the original motion, Plaintiffs focused on trying to undo the finality of the dismissal order in BBSG I. Reading into that strategy an assumption that Plaintiffs conceded that, if the order in BBSG I was considered a final order, the second suit would be barred, the Court did not devote significant discussion to other aspects of the application of the claim preclusion doctrine. Plaintiffs now argue that the dismissal of BBSG I was not on the merits, that the parties were not identical, and that the two cases were not based on the same series of events. These claims are without foundation.

Under Rule 41(b), an involuntary dismissal "operates as an adjudication upon the merits" unless the court in its order of dismissal otherwise specifies. Fed. R. Civ. P. 41(b). The order dismissing BBSG I did not specify that the dismissal was without prejudice, therefore, it was on the merits. As to the issue of identical parties, Plaintiffs argue that the parties are not identical because "Daniel Rigterink is an additional defendant" in BBSG II. Mot. for Recons. at 2. The doctrine of claim preclusion allows preclusion if the parties are identical *or in privity, In re Varat Enterprises, Inc.*, 81 F.3d 1310, 1315 (4th Cir. 1996), and Plaintiffs undeniably treated Rigterink as in privity with, if not identical to, the law firm named as Defendant in BBSG I. *See* BBSG I Am. Compl. ¶ 6 (referring to their retention of the law firm as "contact[ing] Defendant (Rigterink)" and referring to BBSG I as a "suit[] against . . . Rigterink"). As to the issue of whether the two suits arose out of the same series of events, Plaintiffs efforts to distinguish the allegations giving rise to both suits are unavailing. For example, in the Motion for Reconsideration,

Appendix B

Plaintiffs argue that the allegations in BBSG I did not include the allegation that Rigterink failed to inform the judge that the Kants were traveling from New Jersey to attend a July 14, 2001, hearing. Mot. for Recons. 3. The Amended Complaint in BBSG I, however, included significant detail concerning that specific incident. BBSG I Am. Compl. ¶¶ 11, 12 (alleging Plaintiffs "informed Rigterink, also on February 13, 2001, of this continuance request, and requested him to inform the Court that he was on his way if the case was called earlier [, however,] Rigterink [did not] inform . . . the Court that C. Kant had apprised Rigterink the previous day of this continuance request").

As to whether Plaintiffs were entitled to Rule 60(b) relief, the Court relies upon the reasoning set out in its previous ruling. Plaintiffs have presented no new argument or authority warranting a different conclusion.

Accordingly, it is this 16th day of November, 2005, by the United States District Court for the District of Maryland, hereby ORDERED:

1) That Plaintiffs' Motion for Reconsideration, Paper Nos. 17 and 18 (Civil Action No. WMN-04-3433) and Paper Nos. 33 and 34 (Civil Action No. WMN-02-2371) is DENIED;

2) That the Clerk of the Court shall mail or transmit copies of this Memorandum and Order to Plaintiffs and all counsel of record.

/S/
William M. Nickerson
Senior United States District Judge

APPENDIX C — MEMORANDUM OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND DATED AND FILED JULY 5, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. WMN-04-3433

CHANDER KANT, *et al.*

v.

BREGMAN, BERBERT,
SCHWARTZ & GILDAY, LLC, *et al.*

Civil Action No. WMN-02-2371

CHANDER KANT, *et al.*

v.

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

MEMORANDUM

Before the Court are three motions in these two related cases: Defendants' Motion to Dismiss in Civil Action No. WMN-04-3433 (Paper No. 4) and Plaintiffs' Motion for Relief Under Rule 60(b) and Motion to Consolidate in Civil Action No. WMN-02-2371 (Paper Nos. 28 and 29, respectively). The motions are fully briefed and ripe for resolution. Upon a review of the motions and the applicable

case law, the Court determines no hearing is necessary (Local Rule 105.6) and that Plaintiffs' motions must be denied and Defendants' motion to dismiss must be granted.

The two above captioned cases, along with a third case, *Kant v. Nagle & Zeller, P.C.*, Civil Action No. WMN-02-283, arise out of certain state court proceedings brought against Plaintiffs and related to rental property Plaintiffs once owned. In all three suits, Plaintiffs allege that the law firms that represented them in those proceedings conspired with various government officials, court personnel, and even state court judges, to deprive them of their civil rights and property. This Court provided a detailed history of the state court litigation in a previous memorandum. *See* Civil Action No. WMN-02-2371, June 18, 2003, Memorandum at 1-11. That history need not be repeated here.

In the first action brought against Bregman, Berbert, Schwartz & Gilday, LLC (BBSG),[1] Civil Action WMN-02-2371 (*BBSG I*), Plaintiffs brought claims for violations of their civil rights under 42 U.S.C. §§ 1985(3), 1986, 1983, 1981, and 1982. The Court dismissed that action in its entirety on June 18, 2003, observing that while the complaint was "ripe with conclusory language regarding the existence of numerous conspiracies and racial animus on the part of almost everyone that came into contact with the Kants, the facts alleged do not support those conclusions." *Id.* at 9. This Court also opined that "[i]f the Kants take issue with the manner in which their attorneys represented their interests,

1. In Civil Action No. WMN-04-3433, Plaintiffs also named Daniel Rigterink, one of the attorneys at BBSG, as a separate defendant.

the proper course would be to bring suits for malpractice against those attorneys." *Id.* at 11-12. Plaintiffs appealed this Court's dismissal of *BBSG I* and the Fourth Circuit affirmed the decision on March 4, 2004. Plaintiffs filed a petition for a writ of certiorari which the Supreme Court denied on October 4, 2004.

Shortly thereafter, Plaintiffs filed Civil Action No. WMN-02-2371 (*BBSG II*). This second action is based upon the identical conduct as alleged in *BBSG I*, although, in this new complaint, Plaintiffs have omitted the allegations of racial and ethnic animus that permeated their claims in the prior suit. While Plaintiffs do not identify the precise causes of action they are now trying to bring, they are more of the nature of claims of legal malpractice, breach of fiduciary duty, abuse of process, and/or fraud.

In moving to dismiss *BBSG II*, Defendants argue, *inter alia*, that all of Plaintiffs' current claims are barred under the doctrine of "claim preclusion." Under this doctrine, a "prior judgment between the same parties can preclude subsequent litigation on those matters actually and necessarily resolved in the first adjudication." *In re Varat Enterprises, Inc.*, 81 F.3d 1310, 1314-15 (4th Cir. 1996). Rules of claim preclusion also provide that if the later litigation arises from the same cause of action as the first, then the judgment bars litigation not only of every matter actually adjudicated in the earlier case, but also of every claim that might have been presented. *Id.* at 1315. Generally, claim preclusion occurs when three conditions are satisfied:

> 1) the prior judgment was final and on the merits, and rendered by a court of competent jurisdiction in accordance with the requirements of due process; 2) the parties are identical, or in privity, in the two actions; and, 3) the claims in the second matter are based upon the same cause of action involved in the earlier proceeding.

Id.

Under the record as it now stands, these three conditions are clearly satisfied: this Court's dismissal was a judgment on the merits, the parties are identical, and both cases arise out of the same series of events. Plaintiffs do not appear to deny that if the Court's order dismissing *BBSG I* is considered a "final order," then the claims brought in *BBSG II* must be barred. To avoid this result and by way of response to the motion to dismiss, Plaintiffs filed in *BBSG I* a "Motion for Relief under Rule 60(b)" in which they "ask the Court to relieve them of the finality effect of [the] judgment [in *BBSG I*]." Rule 60(b) Mot. at 1. Plaintiffs argue that this Court inadvertently failed to indicate in the order dismissing *BBSG I* that the dismissal was *without prejudice.* This error, Plaintiffs claim, deprived them of the opportunity to amend their complaint to add the factual allegations necessary to state valid causes of action. Plaintiffs ask that the Court amend its prior order, consolidate these two cases and treat the complaint in *BBSG II*, as the "Last Amended Complaint" in *BBSG I.*

Appendix C

Regardless of whether it may have been an error for the Court not to identify the dismissal as "without prejudice,"[2] it is too late at this point to assert such an argument. While Plaintiffs do not specify the provision of Rule 60(b) under which they bring their motion, the Court must assume that it is under clause (1), *i.e.*, on account of a "mistake." Motions brought pursuant to Rule 60(b) must be made "within a reasonable time" and where brought "for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken." Rule 60(b). Plaintiffs implicitly acknowledge the applicability of the one year window in which to file their motion, but argue that the window did not open until the Supreme Court's denial of their certiorari petition. *See* Pls.' Rule 60(b) Mot. at 1 ("This motion is filed less than one year after the Order sought to be amended became final, the Supreme Court denied *certiorari* after plaintiffs' timely appeals.").

The plain language of the rule, however, states a motion under this clause of the rule must be made "not more than one year after the judgment . . . was entered." Courts and

2. The order did not specify whether the dismissal was "with prejudice" or "without prejudice," but simply stated that Defendant's Motion to Dismiss the Amended Complaint "was GRANTED" and that the "action is hereby CLOSED." The Court notes that the motion to dismiss granted by the Court was BBSG's second such motion. Defendants' filed a motion to dismiss Plaintiffs' original complaint in *BBSG I* pointing out the deficiencies in the factual support for Plaintiffs' claims. Instead of opposing that motion, Plaintiffs filed an Amended Complaint but that Amended Complaint suffered the same infirmities. Given that Plaintiff had two opportunities to state valid claims, there was no reason for the Court to afford them a third opportunity to attempt to do so.

commentators have interpreted the rule consistent with that plain language. *See Simon v. Navon*, 116 F.3d 1, 3 (1st Cir. 1997) (holding that period within which party could seek relief from final judgment began to run from entry of judgment following trial, not from date of appellate decision, when the only judgment placed in issue by motion for relief was not altered by the appeal); *Bershad v. McDonough*, 469 F.2d 1333, 1336 (7th Cir. 1972) ("A motion under rule 60(b)(1), by the terms of the rule itself, can only be made within one year after the judgment has been entered. The taking of an appeal does not extend this one year period."); 11 Charles Alan Wright, *et al.*, *Federal Practice and Procedure* § 2866 ("The one-year limit on motions under the first three clauses runs from the date the judgment was entered in the district court.").

Because the Court concludes that its June 18, 2003, Order in *BBSG I* was and is a final order on the merits, it also must conclude that Plaintiffs' claims in *BBSG II* are barred under the doctrine of claim preclusion. The Court will, therefore, grant Defendants' motion to dismiss. A separate order will issue.

s/ William M. Nickerson
William M. Nickerson
Senior United States District Judge

Dated: July 5, 2005

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND DATED AND FILED JULY 5, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Civil Action No. WMN-04-3433

CHANDER KANT, *et al.*

v.

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC, *et al.*

Civil Action No. WMN-02-2371

CHANDER KANT, *et al.*

v.

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

ORDER

In accordance with the foregoing Memorandum and for the reasons stated therein, it is this 5th day of July, 2005, by the United States District Court for the District of Maryland hereby ORDERED:

Appendix D

1) That Plaintiffs' Motion For Relief Under Rule 60(b) in Civil Action No. WMN-02-2371, Paper No. 28, is DENIED;

2) That Defendants' Motion to Dismiss Civil Action No. WMN-04-3433, Paper No. 4, is GRANTED;

3) That Civil Action No. WMN-04-3433 is DISMISSED, with prejudice;

4) That Civil Action No. WMN-04-3433 is hereby CLOSED;

5) That Plaintiffs' Motion to Consolidate, Paper No. 29, is DENIED as MOOT;

6) That the Clerk of the Court shall mail or transmit copies of this Memorandum and Order to all counsel of record.

s/ William M. Nickerson
William M. Nickerson
Senior United States District Judge